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In the Supreme Court of the United States

OCTOBER TERM, 1994

SIDNEY J. BROWN, ET AL., PETITIONERS

v.

RESOLUTION TRUST CORPORATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the court below properly applied the anti-injunction rule of 12 U.S.C. 1821(j) to preclude judicial rescission of a sale by the Resolution Trust Corporation, as receiver, of an asset of a failed savings institution.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-12) is unpublished, but the decision is noted at 30 F.3d 128 (Table). The orders of the district court (Pet. App. 15-16) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 25, 1994. A petition for rehearing was denied on August 19, 1994. Pet. App. 13-14. The petition for a writ of certiorari was filed on November 15, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Congress created the Resolution Trust Corporation in part to liquidate the assets of failed savings institutions and to divide the proceeds among valid creditors in accordance with a statutory distribution scheme. See generally 12 U.S.C. 1441a(b)(3) and (b)(4)(A) (Supp. V 1993); 12 U.S.C. 1821(d)(2)(E) and (H), (d)(10), and (d)(11) (Supp. V 1993), 1821(i) (Supp. V 1993); see also H.R. Rep. No. 54, 101st Cong., 1st Sess. Pt. 1, at 304 (1989). The statutes governing the RTC include a number of provisions designed to ensure the Corporation's ability to discharge those responsibilities quickly and efficiently. In particular, 12 U.S.C. 1821(d)(2)(G)(i)(II) (Supp. V 1993) provides that, subject only to the approval of appropriate federal banking authorities, the RTC as receiver may "transfer any asset or liability of the institution in default * * * without any approval, assignment, or consent with respect to such transfer." In addition, 12 U.S.C. 1821(j) (Supp. V 1993) specifies that, except as otherwise specifically provided, "no court may take any action * * * to restrain or affect the exercise of powers or functions of the Corporation as a conservator or a receiver." Those challenging the RTC's actions as receiver are therefore limited to post hoc claims for monetary damages; and the courts have no jurisdiction over "any claim relating to any act or omission of * * * the Corporation as receiver," unless the claim has first been submitted for consideration under the RTC's own administrative procedures. 12 U.S.C. 1821(d)(13)(D)(ii) (Supp. V 1993); see 12 U.S.C. 1821(d)(6)(A) (Supp. V 1993).

2. In June, 1988, petitioner Nattchase Associates Limited Partnership, of which petitioners Brown and Bernstein are the general partners, borrowed $36 million

dollars from San Jacinto Savings Association, securing the loan with a non-recourse promissory note and a deed of trust on real property located in Loudoun County, Virginia. Pet. App. 3-5 & n.1. Petitioners began to default on the loan in 1989. *Id.* at 5. By March, 1993, the arrearages amounted to more than $14 million in interest alone. RTC C.A. Br. 5.

In 1990 the RTC was appointed receiver for San Jacinto. In liquidating the institution's assets, the RTC included petitioners' note and deed of trust in a pool of non-performing loans packaged together for sale. In July, 1993, the RTC sold the package to respondent CMF Loudoun, LP (CMF), after an auction and bidding process that took place between March and May, 1993. In November, 1993, CMF sought to foreclose on the deed of trust securing the note. Pet. App. 5; Pet. 5 n.3.

3. On November 19, 1993, petitioners filed suit against the RTC and CMF, alleging that the RTC had improperly excluded petitioners from bidding on the package of loans sold to CMF, and that the sale would result in unjust enrichment of CMF. See Pet. 5; Pet. App. 5. The complaint sought a judgment declaring that the RTC's bidding procedures violated the agency's governing statutes and unconstitutionally deprived petitioners of their property without due process of law, and that the sale resulted in the unjust enrichment of CMF under state law; as relief petitioners requested orders requiring a new bidding process, rescinding the sale to CMF, enjoining the scheduled foreclosure, and granting related money damages. Pet. App. 5. The district court not only denied petitioners' request for a temporary restraining order or preliminary injunction but, perceiving "no basis in law upon which plaintiff[s] could prevail against any of the defendants," dismissed the complaint. *Id.* at 15.

On December 14, 1993, petitioners moved under Fed. R. Civ. P. 60(b) to vacate or modify the district court's ruling. See Pet. 6; Pet. App. 11. The RTC agreed that petitioners' claims for damages against the RTC could be submitted to the RTC's administrative claims process, that any adverse determination should be subject to judicial review as provided in 12 U.S.C. 1821(d)(6) and (7) (Supp. V 1993), and that petitioner's monetary claims against the RTC should therefore have been dismissed without prejudice. Following a hearing, however, the district court denied petitioners' motion in its entirety. Pet. App. 16.

4. The court of appeals consolidated petitioners' appeals from the dismissal of their complaint and the denial of their motion under Rule 60(b). The court affirmed the dismissal of petitioners' monetary claims against the RTC, on the ground that petitioners had failed to exhaust the administrative claims process. Pet. App. 5-9. The court rejected (*id.* at 7) petitioners' argument that the administrative exhaustion requirement was inapplicable because the RTC "acted outside its statutory authority in excluding [them] from the bidding process"; rather, the court held that even if the RTC "improperly or unlawfully exercised an authorized power or function, it clearly did not engage in an activity outside its statutory powers." *Ibid.*, quoting *Ward* v. *RTC*, 996 F.2d 99, 103 (5th Cir. 1993). The court also rejected (Pet. App. 7-9) petitioners' contention that exhaustion would be futile. The court did, however, modify the district court's order to reflect dismissal of the monetary claims without prejudice, accepting the RTC's concession that petitioners should have the opportunity to avail themselves of the administrative scheme and of subsequent judicial review of any adverse determination. *Id.* at 9.

The court of appeals also affirmed the district court's denial of injunctive relief against the RTC (Pet. App. 10-11), holding that equitable rescission of the sale to CMF was "expressly barred" by the anti-injunction rule set forth in 12 U.S.C. 1821(j) (Supp. V 1993).

The court of appeals reviewed petitioners' unjust enrichment claim against CMF de novo. Pet. App. 9. The court concluded, however, that the complaint did not allege, and the record did not disclose, that petitioners had "conferred any benefit on CMF, or that CMF requested or received any benefit from [petitioners]." *Id.* at 10. Because "no relief [could] be granted to [petitioners] under any set of facts that could be proven consistent with the allegations in this complaint," the court affirmed the district court's dismissal of the cause of action against CMF and the denial of any order restraining CMF's foreclosure on the loan. *Id.* at 10-11. Petitioners have not sought further review of the judgment in favor of CMF.

ARGUMENT

Petitioners challenge only the court of appeals' denial of equitable relief against the RTC's sale of the Nattchase loan to CMF.[1] The court based its decision

[1] Petitioners do not challenge the court of appeals' decision dismissing their monetary claims against the RTC, without prejudice, pending exhaustion of the RTC's administrative claims procedures. See Pet. i, 8 (raising only questions related to court's injunctive powers under the statute). In any event, any such challenge would now be moot. After the district court's decision in this case, petitioners filed an administrative claim with the RTC. That claim was denied in its entirety on January 10, 1995. In accordance with the statutory claims procedure and the court of appeals' opinion, petitioners are now free either to seek further administrative review of that determination, followed if necessary by judicial review under the Administrative Procedure Act, or to

(Pet. App. 10-11) on 12 U.S.C. 1821(j) (Supp. V 1993), which directs that:

> Except as provided in this section, no court may take any action, except at the request of the Board of Directors by regulation or order, to restrain or affect the exercise of powers or functions of the Corporation as a conservator or a receiver.

As petitioners concede (Pet. 18), the courts of appeals have uniformly accorded the RTC broad protection under Section 1821(j) so long as it acts within its sphere of statutory authority as receiver for a failed thrift.[2] Indeed, the decision below followed five others in rejecting the sort of equitable rescission remedy that petitioners sought in this case. Pet. App. 11 & n.5.

Petitioners contend that Section 1821(j) does not apply in this case because the RTC acted outside its statutory authority when it sold the Nattchase loan to CMF in an auction in which petitioners were not allowed to

pursue the same monetary claims in a new district court proceeding. See 12 U.S.C. 1821(d)(6)-(7) (Supp. V 1993); Pet. App. 9. No further decision in this case could therefore have any effect on petitioners' ability to seek judicial resolution of their monetary claims.

[2] See, *e.g.*, *Tillman* v. *RTC*, 37 F.3d 1032 (4th Cir. 1994); *Volges* v. *RTC*, 32 F.3d 50 (2d Cir. 1994); *Carney* v. *RTC*, 19 F.3d 950, 956-958 (5th Cir. 1994); *Sweeney* v. *RTC*, 16 F.3d 1, 6 (1st Cir.), cert. denied, 115 S. Ct. 291 (1994); *Ward* v. *RTC*, 996 F.2d 99 (5th Cir. 1993); *United Liberty Life Ins. Co.* v. *Ryan*, 985 F.2d 1320, 1328-1329 (6th Cir. 1993); *Gross* v. *Bell Savings Bank, PaSA*, 974 F.2d 403, 407-408 (3d Cir. 1992); *Rosa* v. *RTC*, 938 F.2d 383, 397-400 (3d Cir.), cert. denied, 112 S. Ct. 582 (1991); see also, *e.g.*, *National Trust for Historic Preservation* v. *FDIC*, 21 F.3d 469 (D.C. Cir. 1994), reinstating in part 995 F.2d 238 (D.C. Cir. 1993), cert. denied, 115 S. Ct. 683 (1994); *Lloyd* v. *FDIC*, 22 F.3d 335, 336-337 (1st Cir. 1994).

participate. See, *e.g.*, Pet. 8, 16, 17-20. As the courts of appeals have made clear, however, the RTC cannot be considered to have acted outside the sphere of its authority for these purposes simply because it may have exercised an authorized power or function improperly in a particular case. Any such interpretation would quickly swallow the rule of Section 1821(j), because a party seeking an injunction would always allege that the agency acted improperly. Rather, the anti-injunction provision protects the RTC from being subjected to suits for injunctive relief where it takes actions that are generally within its statutory authority (here, selling assets of a failed institution, see 12 U.S.C. 1821(d)(2)(B), (E) and (G) (Supp. V 1993)), but that are challenged as violating some other legal right or obligation. See, *e.g.*, Pet. App. 7; *Volges* v. *RTC*, *supra* (asset transfer alleged to violate state contract rights); *National Trust for Historic Preservation* v. *FDIC*, *supra* (transfer alleged to violate federal historic preservation statute); *Ward*, 996 F.2d at 102-103 (alleged failure to maximize value of transferred asset); *Gross*, 974 F.2d at 407-408 (alleged ERISA and due process violations); *Rosa*, 938 F.2d at 397-398 (alleged ERISA violation); cf. *Coit Independence Joint Venture* v. *FSLIC*, 489 U.S. 561, 574-577 (1989) (construing similar wording in different statute not to prohibit judicial determination of creditors' claims against failed institution).[3]

Petitioners argue (Pet. 8-17) that the RTC acted improperly by excluding petitioners from bidding on the package that included the Nattchase loan. That argu-

[3] This Court has declined three previous invitations to consider the scope of Section 1821(j). See *National Trust for Historic Preservation* v. *FDIC*, 115 S. Ct. 683 (1994); *281-300 Joint Venture* v. *Onion*, 112 S. Ct. 933 (1992); *Rosa* v. *RTC*, 112 S. Ct. 582 (1991).

ment can be fully addressed, by the RTC and by the courts, in the course of resolving petitioners' claim against the agency for monetary damages in connection with the sale.[4] See note 1, *supra*. In this case, however, the court below correctly held that the asset sale fell within the RTC's statutory authority (Pet. App. 7), and that Section 1821(j) precluded equitable rescission of the sale. We are unaware of any holding to the contrary by this Court or any other court of appeals.

[4] Petitioners contend (Pet. 9-17) that the RTC has either misinterpreted or violated 12 U.S.C. 1441a(f) (Supp. V 1993), which requires the RTC to prohibit sales of a failed institution's assets to specified classes of persons. Neither the district court nor the court of appeals addressed that argument on the merits. Even assuming that petitioners do not fall within any of the classes defined by Section 1441a(f) and its implementing regulations, that Section does not purport to establish an exclusive or exhaustive list of prohibited buyers. A variety of other statutory provisions give the RTC broad discretion in determining how, and to whom, to dispose of assets. See, *e.g.*, 12 U.S.C. 1441a(b)(9)(D) and (b)(11)(A) (Supp. V 1993); 12 U.S.C. 1821(d)(1), (d)(2)(B), (d)(2)(C), (d)(2)(G)(i)(II), and (d)(2)(J) (Supp. V 1993).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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